

UNITED STATES COURT OF APPEALS DISTRICT OF COLUMBIA CIRCUIT

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AGENCY DOCKETING STATEMENT

Administrative Agency Review Proceedings (To be completed by appellant/petitioner)

1. CASE NO. 23-1189 2. DATE DOCKETED: 07-18-2023
3. CASE NAME (lead parties only) Constellation Mystic Power, LLC v. Federal Energy Regulatory Commission
4. TYPE OF CASE: ☒ Review ☐ Appeal ☐ Enforcement ☐ Complaint ☐ Tax Court
5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? ☐ Yes ☒ No
If YES, cite statute _____
6. CASE INFORMATION:
 - a. Identify agency whose order is to be reviewed: Federal Energy Regulatory Commission
 - b. Give agency docket or order number(s): ER18-1639-019 and ER18-1639-024
 - c. Give date(s) of order(s): 03-28-2023 and 05-30-2023
 - d. Has a request for rehearing or reconsideration been filed at the agency? ☒ Yes ☐ No
If so, when was it filled? 04-27-2023 By whom? Please see attachment.
Has the agency acted? ☒ Yes ☐ No If so, when? 05-30-2023
 - e. Identify the basis of appellant's/petitioner's claim of standing. See D.C. Cir. Rule 15(c)(2):
Please see attachment.
 - f. Are any other cases involving the same underlying agency order pending in this Court or any other?
☐ Yes ☒ No If YES, identify case name(s), docket number(s), and court(s) _____
 - g. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve *substantially the same issues* as the instant case presents?
☒ Yes ☐ No If YES, give case name(s) and number(s) of these cases and identify court/agency:
Please see attachment.
 - h. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other alternative for dispute resolution? ☐ Yes ☒ No If YES, provide program name and participation dates. _____

Signature /s/ Matthew A. Fitzgerald Date 08-18-2023

Name of Counsel for Appellant/Petitioner Matthew A. Fitzgerald

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ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 7 calendar days by letter, with copies to all other parties, specifically referring to the challenged statement.

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Constellation Mystic Power, LLC,)	
)	
<i>Petitioner,</i>)	
)	
v.)	
)	No. 23-1189
Federal Energy Regulatory)	
Commission,)	
)	
<i>Respondent.</i>)	
)	

ATTACHMENT TO DOCKETING STATEMENT OF PETITIONER

Docketing Statement Question No. 6 – Case Information:

- d. Has a request for rehearing or reconsideration been filed at the agency? If so, when was it filed? By whom?**

A request for rehearing of *Constellation Mystic Power, LLC*, Order on Remand and On Motion to Hold in Abeyance, Docket No. ER18-1639-019, 182 FERC ¶ 61,200 (March 28, 2023) (“March 2023 Order”) was filed by Constellation Mystic Power, LLC on April 27, 2023.

- e. Identify the basis of appellant’s/petitioner’s claim of standing.**

Section 313(b) of the Federal Power Act, 16 U.S.C. § 825l(b) (2012), permits a party aggrieved by an order of the Federal Energy Regulatory Commission (“Commission”) to obtain judicial review of that order.

Petitioner is the rate proponent of the cost-of-service agreement (“Mystic Agreement”) at issue in the proceedings before the Commission that led to the

orders now on review. The Mystic Agreement permits the recovery of costs related to the Mystic generation units' continued operation, including costs associated with Mystic's fuel procurement from the Everett Marine Terminal, a liquified natural gas import facility. Certain such costs are projected in advance and subsequently "trued-up" when the actual costs are known through a "formula rate." The true-up process associated with the formula rate involves challenge procedures where FERC may determine that Mystic cannot recover the costs. Other costs are recovered as a straight pass-through of the actual costs as they are incurred and are not forecasted and then subject to the prescribed true-up and challenge procedures. As explained above, Petitioner sought rehearing of the March 2023 Order on April 27, 2023. In a May 2023 Notice, *Constellation Mystic Power, LLC*, Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration, Docket No. ER 18-1639-024, 183 FERC ¶ 62,115 (May 30, 2023) ("Notice"), the Commission issued a notice of denial of rehearing on Petitioner's request for clarification and limited rehearing that impact the scope of the true-up process.

The orders on review improperly found that certain costs expressly excluded from the true-up and challenge procedures are nonetheless subject to true-up and challenge. The Commission's directives fundamentally change how Mystic recovers its actual costs, making it less likely that Mystic will eventually fully and

properly recover its costs. Mystic is thus aggrieved by the Commission's ruling in the above-referenced orders.

- g. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve *substantially the same issues* as the instant case presents?**

Petitioner believes the answer to this question is no, but notes for the Court that currently pending in this Court are seven consolidated cases from *related* FERC orders also addressing the Mystic agreement. (Nos. 21-1198, 21-1222, 21-1223, 21-1224, 22-1001, 22-1008, and 22-1026) (all presenting Return on Equity issues, which are not at issue in this appeal, and all held in abeyance for another FERC proceeding).

Dated: August 18, 2023

Respectfully submitted,

/s/ Matthew A. Fitzgerald

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*Counsel for Constellation Mystic
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CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2023, I filed the foregoing with the Clerk of the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system, which will also serve counsel of record.

/s/ Matthew A. Fitzgerald
Matthew A. Fitzgerald

*Counsel for Constellation Mystic
Power, LLC*